



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0306; FRL-9713-02-R9]

Determination to Defer Sanctions; California; San Diego County Air Pollution Control

District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of California has submitted rules that satisfy the requirements of part D of the Clean Air Act (CAA or “Act”) permitting program for areas under the jurisdiction of the San Diego County Air Pollution Control District (SDAPCD or “District”). This determination is based on a proposed approval, published elsewhere in this *Federal Register*, of District rules addressing these requirements. The effect of this interim final determination is to defer the imposition of sanctions that were triggered by a previous EPA action that included a limited disapproval of the District’s rules.

DATES: This interim final determination is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. However, comments will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0306 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105; by phone: (415) 972-3534, or by email to

yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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I. Background

On September 16, 2020, the EPA issued a final action addressing revisions to the SDAPCD portion of the California State Implementation Plan (SIP) (“2020 NSR Action”).¹ The 2020 NSR Action addressed the District’s permitting program for the issuance of New Source Review (NSR) permits for stationary sources, including review and permitting of major and minor sources under the Act. In the 2020 NSR Action, we determined that while the District’s

¹ 85 FR 57727.

SIP revision submittal strengthened the California SIP, the submittal did not fully meet the requirements for NSR permitting programs under the CAA. Accordingly, the 2020 NSR Action included a limited disapproval under title I, part D, of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of October 16, 2020, and highway sanctions 6 months later.

On October 14, 2021, the District revised its NSR permitting program rules and on February 2, 2022, the State submitted three revised NSR permitting rules to the EPA for approval into the San Diego County portion of the California SIP ("2022 NSR Submittal"), including revisions to one rule intended to address the limited disapproval issue identified in the 2020 NSR Action. In the Proposed Rules section of this *Federal Register*, we have proposed approval of the District's 2022 NSR submittal. Based on this proposed approval action, we are also taking this final rulemaking action, effective upon publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by the 2020 NSR Action's limited disapproval of the District's NSR permitting program, because we believe that the 2022 NSR Submittal corrects the deficiency that triggered these sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment, as described in this final determination and in our proposed full approval of the District's 2022 NSR Submittal, with respect to the deficiency identified as the basis for our limited disapproval in the 2020 NSR Action, we will take final action proposing to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2020 NSR Action will be permanently terminated on the effective date of our final approval of the 2022 NSR Submittal.

II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our September 16, 2020 limited disapproval of the District's NSR permitting program. This determination is based on our concurrent proposal to fully approve the District's 2022 NSR submittal, which resolves the deficiency that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that the District's 2022 NSR Submittal addresses the deficiency identified in the 2020 NSR Action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the District's submittal and, through its proposed action, is indicating that it is more likely than not that it corrects the deficiencies that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while we complete our rulemaking process on the approvability of the District's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: April 29, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2022-09742 Filed: 5/11/2022 8:45 am; Publication Date: 5/12/2022]